

Michael T. Welch (#122630)  
LAW OFFICES OF MICHAEL T. WELCH  
Four Embarcadero Center, 39<sup>th</sup> Floor  
San Francisco, California 94111  
Telephone: (415)399-1500  
Facsimile: (415)399-0445

Attorneys for Plaintiff  
AUTOMATED MEDIA PROCESSING SOLUTIONS, INC.,  
dba EQUILIBRIUM

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AUTOMATED MEDIA PROCESSING  
SOLUTIONS, INC., dba EQUILIBRIUM, a  
corporation,

Plaintiff,

v.

SCHAWK DIGITAL SOLUTIONS, INC., a  
business entity; BLUE SOFTWARE, LLC, a  
business entity,

Defendants.

CASE NO. 15-cv-05018 SI

**EX PARTE APPLICATION FOR  
CONTINUANCE OF CASE  
MANAGEMENT CONFERENCE AND  
SCHEDULING ORDER**

Date: February 19, 2016

Time: 2:30 PM

Dept.: Courtroom 1

**I. APPLICATION AND GROUNDS**

Plaintiff AUTOMATED MEDIA PROCESSING SOLUTIONS, INC., dba  
EQUILIBRIUM ("EQUILIBRIUM") respectfully requests that the Court continue the Case  
Management Conference presently scheduled for February 19, 2016, for a reasonable  
period of approximately three weeks. The reasons, as set forth further in the attached  
declaration of Michael Welch, counsel for plaintiff, are as follows. First and most  
significant is that plaintiff's counsel has not received any notices or documents from the

1 District Court regarding this case due to a never before experienced problem apparently  
2 related to the e-mail address of record where said counsel has previously received and sent  
3 documents under the Court's "ECF" system for approximately 10 years. It was first  
4 brought to counsel's attention approximately 2 weeks ago and plaintiff's counsel though he  
5 had corrected it (by using the ECF on-line "help" system to change the e-mail address), but  
6 it failed as the notice of the current Case Management Conference and scheduling order  
7 was not received, and counsel was alerted to it only by a call from the Court's clerk  
8 yesterday. This is in the process of being corrected (hopefully more effectively) with an  
9 outside consultant with the assistance of information and resources provided by the "ECF"  
10 support group, and in the meantime this case's docket is being monitored once per day for  
11 any further notices or documents that may be filed or sent to counsel.

12 The second reason is that the defendants were just served with the summons and  
13 complaint, so have not yet had the opportunity to respond and appear. Plaintiff's counsel  
14 filed this case in early November, 2015, and calendared the last dates, and also planned  
15 dates and deadlines, for service of summons and complaint, based on Fed. Rule of Civ.  
16 Proc. 4(m) at the time, which provided for 120 days to effect service (as had been the rule  
17 for the 30 years of this counsel's practice). The intent was not to wait until the last day  
18 (i.e., solely for maximizing the time of service), but to allow for the anticipation that  
19 additional events would occur in or by February that would likely require amending the  
20 complaint to add or revise one or more claims. However, upon becoming aware of both  
21 the newly scheduled Case Management Conference (through telephone follow-up by the  
22 Court's clerk) and the recent revisions to the Federal Rules after this action was filed that  
23 reduce the time for service, plaintiff's counsel immediately effected service on the two  
24 defendants. To the extent that plaintiff needs to amend the current complaint in the near  
25 future, it will do so through normal amendment procedures (i.e., by stipulation or motion).

26 Based on the above-stated lack of actual notice received by plaintiff's counsel of  
27 the currently scheduled Case Management Conference, and the need for some additional

1 time to consult with counsel for the newly served defendants to prepare the requisite  
2 Scheduling Order (and their appearances), plaintiff respectfully requests that the Court  
3 grant this Application for Continuance and issue an order setting a new date for the Case  
4 Management Conference and scheduling order.

5 Respectfully submitted,

7 LAW OFFICES OF MICHAEL T. WELCH

9 Dated: February 18, 2016

10 By: /s/ Michael Welch  
11 Michael T. Welch  
12 Attorney for Plaintiff  
13 AUTOMATED MEDIA PROCESSING  
14 SOLUTIONS, INC., dba EQUILIBRIUM

15 The Initial Case Management Conference has  
16 been continued to Friday, March 18, 2016 at  
17 2:30 p.m.

18 The Joint Case Management Conference Statement  
19 shall be filed on March 11, 2016.



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AUTOMATED MEDIA PROCESSING  
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SCHAWK DIGITAL SOLUTIONS, INC., a  
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Defendants.

CASE NO. 15-cv-05018 SI

**DECLARATION OF MICHAEL  
WELCH IN SUPPORT EX PARTE  
APPLICATION FOR CONTINUANCE  
OF CASE MANAGEMENT  
CONFERENCE AND SCHEDULING  
ORDER**

Date: February 19, 2016  
Time: 2:30 PM  
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I, Michael Welch, declare as follows:

1. I am an attorney duly admitted to practice in the State of California and in the  
U.S. District Court for the Northern District of California, and am the attorney for the  
plaintiff, AUTOMATED MEDIA PROCESSING SOLUTIONS, INC., dba  
EQUILIBRIUM ("EQUILIBRIUM") in this action. I have personal knowledge of the facts  
stated in this Declaration.

1           2. I filed this action in early November, 2015. At that time, as is my practice, I  
2           calendared both the last date for service of the defendants under the Federal Rules, and the  
3           date by which my client and I anticipated serving defendants based on what was perceived  
4           as a likelihood of one or more events occurring regarding the contract claims in this action  
5           that might necessitate amending the complaint. At that time, Federal Rule of Civil  
6           Procedure 4 provided for the summons and complaint to be served within 120 days, so I  
7           calendared the final date for service as March 1, 2016, and the last date by which we would  
8           make service as February 22, 2016.

9           3. Thereafter I did not receive any notices or documents regarding this case by e-  
10          mail under the Court's "ECF" system, but as it was still relatively early in the case and the  
11          defendants had not been served, I was not anticipating any type of notice or document by  
12          any date certain. However, on approximately February 2 I was contacted by Ada Means,  
13          the clerk for Magistrate Judge Corley, who informed me of the deadline for filing a consent  
14          or declination to have the case heard before Judge Corley, and who told me she had  
15          attempted to e-mail me at the e-mail address listed on my "ECF" record, but that the e-mail  
16          had "bounced back" to her. I telephoned her and she also informed me of another Notice  
17          that had been sent to me regarding a scheduling order, which I had never received. At that  
18          point I ascertained that there was some type of problem with the e-mail address or system  
19          that served as my long-standing e-mail address in the "ECF" system, even after my normal  
20          office e-mail address was changed several years ago to the above "gmail" address, as e-  
21          mails sent to the former address were "bouncing back" and not being received by me on  
22          that system from the court (but that address was still receiving other e-mails, e.g., personal,  
23          business, "spam", etc.).

24          4. After receiving that information from Ms. Means, I promptly file a Notice of  
25          declination of having the case heard by the Magistrate Judge. I also personally went to the  
26          website of the Northern District and accessed the "ECF" system and its "help" sections that  
27          provided instructions on changing or adding an attorney's website address on the system. I  
28

1 followed the instructions and steps provided, and I believe and understood that I had  
2 successfully replaced my prior e-mail address (that appeared to be the cause of the “bounce  
3 back” problem) with my current and fully functional e-mail address  
4 ([mwelchlaw@gmail.com](mailto:mwelchlaw@gmail.com)). I assumed that the above problem had been corrected, and that  
5 I would receive any further notices or documents filed in the case at this e-mail address.

6 5. Yesterday, February 17, I received a voice-mail message on my office telephone  
7 from Tracy, a clerk of this Court. I telephoned her back right after I listened to the  
8 message, and she told me she was calling to inquire of the status of the scheduling order  
9 that was due in advance of the Case Management Conference set for this Friday, February  
10 19. I did not receive a notice of either the Conference or the scheduling order at my e-mail  
11 address, i.e., my “gmail” address that I had recently made as the main address for receiving  
12 e-mails, and I informed Tracy of the problem described above that I had experienced, and  
13 that I thought I had successfully corrected it. She also asked me about the status of a proof  
14 or service on the defendants, and in the course of that discussion it came out that the Court  
15 had recently changed / updated many of its rules and procedures, including a reduction of  
16 the former 120 day service limit (which I subsequently confirmed by research of the  
17 revised rules). I stated that the defendants were due to be served shortly, and I then  
18 expedited that process so that both were served (by stipulation of counsel to accept service,  
19 for defendant Schawk Digital Solutions, and by personal service on the registered agent of  
20 defendant Blue Software, LLC, as of today, February 18. I intend to follow up with  
21 counsel for Schawk as soon as possible to discuss the items in the scheduling order and  
22 reach agreement on a joint scheduling order, and to do so with counsel for Blue Software  
23 as soon as I learn who that is.

24 6. I also have asked my outside tech support vendor to assist me this time in going  
25 back to the ECF site, and to work with any support staff attached to that site, if necessary,  
26 to ensure that my proper e-mail address (my “gmail” account) is properly and fully  
27 installed and functional, which I understand will occur within the next several days. In the

1 meantime I am checking the docket myself for this case on a daily basis to make sure I  
2 know of any filings.

3 I declare under penalty of perjury under the laws of California and the United States  
4 that the foregoing is true and correct.

5  
6 Dated: February 18, 2016

By: /S/ Michael Welch  
Michael T. Welch  
Attorney for Plaintiff  
AUTOMATED MEDIA PROCESSING  
SOLUTIONS, INC., dba EQUILIBRIUM